

REMARKS

A. Status of the Claims

Claims 1-3 were pending at the issuance of the instant Office Action. Claims 1-3 are rejected in the instant Office Action. No claims are amended, added, or canceled herein. Applicants thank the Examiner for the previous consideration of our submissions.

B. Rejections under 35 U.S.C. § 103(a)

Claims 1-3 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Malfroy-Camine *et al.* (6,064,188) in view of Winkler *et al.* (Molecular Vision 1999).

The Action indicates that Malfroy-Camine *et al.* is cited to show that the claimed compounds have superoxide dismutase activity. The Action alleges that Winkler *et al.* teach the role oxidation in macular degeneration and suggests that superoxide dismutase may be involved in preventing oxidative damage. The instant rejection, therefore, hinges on whether Winkler *et al.* suggests that superoxide dismutase compounds can be used to prevent oxidative damage that may be associated with macular degeneration. The Action indicates that Applicants' previous arguments and remarks relative to the sufficiency of Winkler *et al.* to support the instant rejection were not well taken, because obviousness does not require absolute predictability.

As stated in MPEP 2143.02(II): "obviousness does not require absolute predictability, however, at least some degree of predictability is required. Evidence showing there was no reasonable expectation of success may support a conclusion of nonobviousness" (citing *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143 (CCPA 1976)). Applicants submit that the teachings of De La Paz and Delcourt (discussed in Applicants' Responses submitted August 1, 2007, October 1, 2007, and June 25, 2008, and April 4, 2009) provide evidence that one of skill in the art would not necessarily have expected that superoxide dismutase compounds could be used to treat macular degeneration. The Action has again mischaracterized the teachings of De La Paz and Delcourt, stating that "the references recognize that superoxide dismutase is involved in protecting against oxidative damage such as that which leads to AMD" (Action, page 5). As pointed out previously, De La Paz and Delcourt conclude that there is no significant association between disease severity of AMD and superoxide

dismutase activity, and that high levels of erythrocyte superoxide dismutase activity were not associated with late AMD and early signs of AMD. Winkler *et al.* does not provide any evidence to the contrary.

MPEP §2143.02 (II) states that “the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teaching of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another.” Applicants submit that the combined teachings of Winkler *et al.*, De La Paz, and Delcourt indicate that there was no reasonable expectation of success for the use of any superoxide dismutase compound to treat AMD.

In light of the foregoing arguments, Applicants submit that the Action has erred in combining the cited references to arrive at the instant invention. Consequently, Applicants respectfully request that the obviousness rejection be withdrawn.

C. Conclusion

This is submitted to be a complete response to the outstanding Action. The Examiner is invited to contact the undersigned attorney at (817) 615-5330 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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